

**NLWJC - KAGAN**

**EMAILS CREATED**

**ARMS - BOX 010 - FOLDER 004**

**[2/5/1996 - 3/11/1996]**

# Withdrawal/Redaction Sheet

## Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Elena Kagan to Ron Klain. Subject: gossip (1 page)	02/05/1996	P6/b(6)
002. email	Elena Kagan to Ron Klain. Subject: Jobs (1 page)	02/05/1996	P6/b(6)
003. email	Elena Kagan to Ron Klain. Subject: gossip (1 page)	02/05/1996	P6/b(6)
004. email	Elena Kagan to Jennifer O'Connor. Subject: [letter] (1 page)	02/12/1996	Personal Misfile
005. email	[Elena Kagan] to Kumiki Gibson at 17:24:00.00. Subject: STOMP (1 page)	02/14/1996	Personal Misfile
006. email	[Elena Kagan] to Kumiki Gibson at 17:24:50.01. Subject: STOMP (1 page)	02/14/1996	Personal Misfile
007. email	Elena Kagan to Jack Quinn and Kathleen Wallman. Subject: [representation] (1 page)	02/20/1996	P5
008. email	Elena Kagan to Ron Klain. Subject: [career] (1 page)	03/06/1996	Personal Misfile
009. email	Elena Kagan to Kathleen Wallman. Subject: attached [partial] (1 page)	03/08/1996	P6/b(6)
010. email	Elena Kagan to Ron Klain. Subject: ambition (1 page)	03/10/1996	P6/b(6)
011. email	Elena Kagan to Ron Klain re: ambition (1 page)	03/11/1996	P6/b(6)

### COLLECTION:

Clinton Presidential Records  
Automated Records Management System (Email)  
WHO ([From Elena Kagan])  
OA/Box Number: 500000

### FOLDER TITLE:

[2/5/1996 - 3/11/1996]

2009-1006-F

ke776

### RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

Freedom of Information Act - [5 U.S.C. 552(b)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

- b(1) National security classified information [(b)(1) of the FOIA]
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- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

- C. Closed in accordance with restrictions contained in donor's deed of gift.
- PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
- RR. Document will be reviewed upon request.

# Withdrawal/Redaction Marker

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Automated Records Management System (Email)  
WHO ([From Elena Kagan])  
OA/Box Number: 500000

### FOLDER TITLE:

[2/5/1996 - 3/11/1996]

2009-1006-F  
ke776

### RESTRICTION CODES

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RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME: 5-FEB-1996 09:45:22.27

SUBJECT: timber memo

TO: Thomas C. Jensen

( JENSEN\_T ) Autoforward to: Remote Addressee

READ:NOT READ

TEXT:

Sorry to raise this at such a late date, but shouldn't we raise as an option the repeal of only the green sections of the rider? That option would be largely welcomed by the enviros; at the same time, it would be more consistent than a full repeal with the President's stated position.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME: 5-FEB-1996 10:06:53.88

SUBJECT: test

TO: Renee A. Warren

( WARREN\_R ) (WHO)

READ: 5-FEB-1996 10:33:39.14

TEXT:

test

# Withdrawal/Redaction Marker

## Clinton Library

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002. email	Elena Kagan to Ron Klain. Subject: Jobs (1 page)	02/05/1996	P6/b(6)

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WHO ([From Elena Kagan])  
OA/Box Number: 500000

### FOLDER TITLE:

[2/5/1996 - 3/11/1996]

2009-1006-F  
ke776

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RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME: 5-FEB-1996 18:54:45.77

SUBJECT: RE: pol meeting

TO: Paul J. Weinstein, Jr ( WEINSTEIN\_P ) (OPD)

READ: 6-FEB-1996 09:32:35.45

TEXT:

Until 2 and after 4:30. Thanks.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 READ RECEIPT)

CREATOR: KAGAN\_E (WHO)

CREATION DATE/TIME: 5-FEB-1996 18:54:00.00

SUBJECT: Receipt Notification

TO: WEINSTEIN\_P (OPD)

READ: 6-FEB-1996 09:32:42.28

TEXT:

This is a Read Receipt Notification for:

Message Title: pol meeting  
Addressee: KAGAN\_E  
Date Sent: 05-Feb-1996 06:53pm  
Date Read: 05-Feb-1996 06:54pm



RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME: 5-FEB-1996 09:40:31.85

SUBJECT: RE: Revised timber memo

TO: JensenTC

( JensenTC@aol.com@INET@EOPMRX )

READ:NOT READ

TEXT:

Sorry to raise this at such a late date, but should we also include as an option the repeal of only the green sections of the rider? This option would be largely welcomed by environmentalists; at the same time, it would be less inconsistent than a full repeal with the President's stated position.

# Withdrawal/Redaction Marker

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
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ke776

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RR. Document will be reviewed upon request.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME: 5-FEB-1996 11:43:35.93

SUBJECT: abortion

TO: Jack M. Quinn ( QUINN\_J ) (WHO)

READ:13-FEB-1996 16:50:11.34

TEXT:

FYI: FLOTUS's office called to ask for partial birth memos. I gave them copies of all 3.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME: 5-FEB-1996 09:42:33.68

SUBJECT: timber

TO: Thomas C. Jensen

( JENSEN\_T ) Autoforward to: Remote Addressee

READ:NOT READ

TEXT:

===== ATTACHMENT 1 =====

ATT CREATION TIME/DATE: 5-FEB-1996 09:36:00.00

ATT BODYPART TYPE:B

ATT CREATOR: Elena Kagan

ATT SUBJECT: RE: Revised timber memo

ATT TO: JensenTC

( JensenTC@aol.com@INET@EOPMRX )

TEXT:

Sorry to raise this at such a late date, but should we also include as an option the repeal of only the green sections of the rider? This option would be largely welcomed by environmentalists; at the same time, it would be less inconsistent than a full repeal with the President's stated position.

===== END ATTACHMENT 1 =====

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 READ RECEIPT)

CREATOR: KAGAN\_E (WHO)

CREATION DATE/TIME: 6-FEB-1996 10:07:00.00

SUBJECT: Receipt Notification

TO: WEINSTEIN\_P (OPD)

READ: 6-FEB-1996 14:09:19.00

TEXT:

This is a Read Receipt Notification for:

Message Title: pol meetin  
Addressee: KAGAN\_E  
Date Sent: 06-Feb-1996 09:34am  
Date Read: 06-Feb-1996 10:07am

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 READ RECEIPT)

CREATOR: KAGAN\_E (WHO)

CREATION DATE/TIME: 7-FEB-1996 18:05:00.00

SUBJECT: Receipt Notification

TO: JURITH\_E (DON)

READ: 8-FEB-1996 09:04:34.51

TEXT:

This is a Read Receipt Notification for:

Message Title: House Government Reform and Oversight Subpoena  
Addressee: KAGAN\_E  
Date Sent: 07-Feb-1996 04:01pm  
Date Read: 07-Feb-1996 06:05pm

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME: 9-FEB-1996 08:16:52.74

SUBJECT: fyi

TO: Todd Stern ( STERN\_T ) (WHO)

READ: 9-FEB-1996 12:05:49.62

TEXT:

I thought you might be interested in this.

===== ATTACHMENT 1 =====

ATT CREATION TIME/DATE: 9-FEB-1996 08:15:00.00

ATT BODYPART TYPE:p

ATT CREATOR: Elena Kagan

TEXT:

PRINTER FONT 12\_POINT\_COURIER

February 8, 1996

MEMORANDUM FOR JACK QUINN

MARVIN KRISLOV

FROM: ELENA KAGAN

SUBJECT: ENFORCING UNCONSTITUTIONAL LAWS

As we discussed this morning on the phone, I can see two arguments for distinguishing between the Comstock Act and the HIV statute. I am not sure, however, that either fully justifies the position Justice is now taking -- i.e., that the Department should neither enforce nor defend the Comstock Act, while enforcing but not defending the HIV statute.

1. DOJ might argue that the Comstock Act and the HIV statute differ in their likelihood of judicial invalidation: the Comstock Act is more clearly unconstitutional than the HIV statute under the Court's current law.

This claim, of course, would be true. The likelihood that the Court would invalidate the Comstock Act, as applied to abortion

-related speech, seems to me about 98%. The likelihood that the Court would invalidate the HIV statute is, we can all agree, less than that.

But I'm not sure that DOJ's position follows easily from this difference. It seems to me that the executive branch either has sufficient basis to treat a statute as invalid (in which case it can refuse to defend and to enforce, as it has done with respect to the Comstock Act) -- or the executive branch does not have sufficient basis to treat a statute as invalid (in which case it must enforce and defend). Determining the likelihood of judicial invalidation may be the proper way to determine whether there is a sufficient basis to treat a statute as invalid; hence there may be reason to distinguish between the Comstock Act and the HIV statute. But this distinction would apply with respect to both enforcing and defending the statutes -- not only (as DOJ's current position implies) with respect to enforcing them.

Perhaps DOJ is making the claim that there are two different thresholds -- one for the decision not to defend, another and higher one for the decision not to enforce. Then, it could be claimed that whereas the Comstock Act passes both thresholds, the

HIV statute passes only the lower one. But I am not sure where this view would come from; this is a halfway house with no

principled rationale behind it. As noted above, the key question is whether the executive branch has authority to treat a law as invalid; both enforcement decisions and defense decisions flow from the answer to that question.

Of course, DOJ attorneys might respond to this argument by saying that if put to this all

-or

-nothing choice, they will choose both to defend and enforce the HIV statute. Then, we will have to go along with their current position. But that position doesn't make a lot of sense to me. I think we at least should ask DOJ to explain it more fully.

2. Alternatively, DOJ might argue that the Comstock Act and HIV statute differ in the kind of obligations they impose on the executive branch. The HIV statute requires the government to do something: to separate service members with HIV from the military. The Comstock Act doesn't require the executive branch to do anything at all: it just prohibits private persons from doing something (disseminating abortion

-related materials). DOJ may be saying that this difference makes a difference: although the executive branch can refuse to enforce a patently unconstitutional law addressed to a private party, it cannot refuse to comply with a patently unconstitutional law addressed to itself.

But this argument does not seem a very good one. What difference does it really make whether Congress explicitly directs the executive branch to take action against private persons (via separation) or implicitly directs the executive branch to take such action (via prosecution)? In either case, refusal to comply with the directive violates congressional will. Perhaps the doctrine of prosecutorial discretion somehow comes into play here, but I doubt in a way that completely divides one set of cases from the other.

To prove the weakness of the argument, consider an example. Suppose that Congress passed a law directing the executive branch to separate all African

-Americans from the military. Would DOJ say that the executive branch must act in accord with this directive (and then refuse to defend it)? If not -- if DOJ would say the executive branch simply could refuse to comply with the directive -- then this second argument collapses. In that event, what must be driving DOJ is the first argument discussed above -- that the HIV statute is not so clearly unconstitutional as my hypothetical (or as the Comstock Act). But that recalls the questions raised above in the discussion of that argument.

===== END ATTACHMENT 1 =====



RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME: 9-FEB-1996 13:09:30.58

SUBJECT: timber--denial of stay

TO: Martha Foley ( FOLEY\_M ) (WHO)

READ: 9-FEB-1996 13:59:40.88

TO: Jennifer M. O'Connor ( OCONNOR\_J ) (WHO)

READ: 9-FEB-1996 16:06:43.43

TO: Kathleen A. McGinty ( MCGINTY\_K ) (CEQ)

READ: 9-FEB-1996 17:47:59.05

TO: Dinah Bear ( BEAR\_D ) (CEQ)

READ: 9-FEB-1996 13:45:16.47

TO: Barbara C. Chow ( CHOW\_B ) (WHO)

READ: 9-FEB-1996 14:13:25.27

TEXT:

I just got word from DOJ that the 9th Circuit (more specifically, a two-judge motions panel consisting of Judges Hawkins and Canby) has denied our motion for a stay pending appeal on the "next high bidder" issue. This means -- unless we seek further review -- that we must release two BLM sales and 15 forest service sales hinging on this issue.

Further review of the decision to deny the stay is available in two forms, both of which require approval from the Solicitor General. First, we can ask that the entire 9th Circuit reconsider the order en banc. The request for such review is controlled by the original motions panel and is unlikely to be granted. Second, we can ask Justice O'Connor, the Circuit Justice for the 9th Circuit for a stay pending appeal. The standard applied to such a request is whether the issue in the case meets the Supreme Court's usual standards for granting certiorari. The issue of statutory interpretation presented here does not appear to do so; hence the likelihood of actually getting a stay is small.

It should be kept in mind, in thinking about whether we wish to press the SG on this issue, that seeking a stay here may slightly (though I think only slightly) decrease our chances of actually getting a stay on the murrelet issue, if and when we have to apply to the Supreme Court for that. The concern is that we might be treated as "crying wolf" on timber issues if we go to the Court on even the minor ones.

We should discuss this ASAP -- perhaps at our 5:30 meeting.

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## Clinton Library

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Clinton Presidential Records  
Automated Records Management System (Email)  
WHO ([From Elena Kagan])  
OA/Box Number: 500000

### FOLDER TITLE:

[2/5/1996 - 3/11/1996]

2009-1006-F  
ke776

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RR. Document will be reviewed upon request.

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RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME:12-FEB-1996 17:11:17.56

SUBJECT: language

TO: Michael A. Fitzpatrick ( FITZPATRIC\_M ) (OMB)

READ:12-FEB-1996 17:16:52.93

TEXT:

PRINTER FONT 12\_POINT\_COURIER

Except as otherwise provided in this section, failure of an agency to comply with the procedures required by this subchapter or subchapter III shall not provide grounds for setting aside or remanding the rule under review unless the court finds that [there is a substantial likelihood that] the agency's failure to comply with such procedures materially affected the outcome of the final agency action and that such action, based on the rulemaking file as a whole, is arbitrary, capricious, or an abuse of discretion (or unsupported by substantial evidence where that standard is otherwise provided by law).

Should the material in brackets be deleted?

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME:12-FEB-1996 10:55:19.46

SUBJECT: stomp dates

TO: Kathleen M. Whalen ( WHALEN\_K ) (WHO)

READ:12-FEB-1996 10:57:37.00

TEXT:

All clear,

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME:12-FEB-1996 18:07:43.98

SUBJECT: fyi on timber

TO: Jack M. Quinn ( QUINN\_J ) (WHO)

READ:13-FEB-1996 20:04:34.13

TEXT:

Harold decided we should petition for the ninth circuit to rehear en banc our motion for a stay pending appeal. It's possible that the SG will have real objections to this (though the SG's objections should be much less strong than if Harold had decided to seek a stay in the Supreme Court). I'll let you know if there are any problems.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME:13-FEB-1996 17:37:21.69

SUBJECT: RE: campaihn finance reform

TO: Kathleen M. Wallman ( WALLMAN\_KM ) (WHO)

READ:13-FEB-1996 17:55:42.54

TEXT:

hmm. I got no attachment.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME:13-FEB-1996 12:12:54.01

SUBJECT: timber stay

TO: Jennifer M. O'Connor ( OCONNOR\_J ) (WHO)

READ:13-FEB-1996 12:25:17.40

TEXT:

Interior and Agriculture are both on board, so we now have a unanimous recommendation to the Justice Dept to seek rehearing.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME:13-FEB-1996 17:36:43.30

SUBJECT: RE: Memo from Kathy Wallman

TO: Odetta S. Walker ( WALKER\_O ) (WHO)

READ:13-FEB-1996 18:30:03.34

TEXT:

Sure (but also feel free to give it to someone else).



RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME:13-FEB-1996 10:45:33.16

SUBJECT: partial birth abortion

TO: Jack M. Quinn ( QUINN\_J ) (WHO)

READ:13-FEB-1996 20:05:21.91

TEXT:

Do you know if anything ever happened to our abortion memo and draft letter?

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME:13-FEB-1996 12:33:35.83

SUBJECT: silence

TO: Ron Klain ( KLAIN\_R ) Autoforward to: Remote Addressee  
READ:NOT READ

TEXT:  
so, is silence bad news?

# Withdrawal/Redaction Marker

## Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
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005. email	[Elena Kagan] to Kumiki Gibson at 17:24:00.00. Subject: STOMP (1 page)	02/14/1996	Personal Misfile
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Automated Records Management System (Email)  
WHO ([From Elena Kagan])  
OA/Box Number: 500000

### FOLDER TITLE:

[2/5/1996 - 3/11/1996]

2009-1006-F

ke776

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Freedom of Information Act - [5 U.S.C. 552(b)]

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P2 Relating to the appointment to Federal office [(a)(2) of the PRA]  
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P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]  
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

b(1) National security classified information [(b)(1) of the FOIA]  
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]  
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]  
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]  
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]  
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]  
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]  
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

# Withdrawal/Redaction Marker

## Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
006. email	[Elena Kagan] to Kumiki Gibson at 17:24:50.01. Subject: STOMP (1 page)	02/14/1996	Personal Misfile

### COLLECTION:

Clinton Presidential Records  
Automated Records Management System (Email)  
WHO ([From Elena Kagan])  
OA/Box Number: 500000

### FOLDER TITLE:

[2/5/1996 - 3/11/1996]

2009-1006-F  
ke776

### RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 READ RECEIPT)

CREATOR: KAGAN\_E (WHO)

CREATION DATE/TIME:14-FEB-1996 15:38:00.00

SUBJECT: Receipt Notification

TO: WEINSTEIN\_P (OPD)

READ:14-FEB-1996 15:57:06.41

TEXT:

This is a Read Receipt Notification for:

Message Title: ICKES MEMO  
Addressee: KAGAN\_E  
Date Sent: 14-Feb-1996 02:06pm  
Date Read: 14-Feb-1996 03:38pm

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME:15-FEB-1996 16:20:19.48

SUBJECT: RE: PRESIDENT'S DAY

TO: Odetta S. Walker ( WALKER\_O ) (WHO)

READ:15-FEB-1996 17:25:58.42

TEXT:

if needed; not otherwise.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME:15-FEB-1996 09:29:34.50

SUBJECT: political reform form letter

TO: Lori L. Anderson ( ANDERSON\_L ) (WHO)

READ:15-FEB-1996 10:23:12.43

TEXT:

Kathy Wallman asked me to take a look at the political reform form letter that you sent to her. In general, it looks excellent. But a few comments:

1. The President is supposed to be saying something on this subject in this weekend's radio address. It might make sense to see what he says there and use some of his language in this letter.
  2. In general, the letter seems to give too much credit to the Congress. This is especially so in the third paragraph -- "Congress is striving," "Congress is working hard." In fact, Congress is going to let McCain Feingold die a quiet death, so the credit is undeserved. And anyway, why should we spend so much time talking about how great Congress is? Could we make this paragraph especially more President-focused? That is, just make clear that the President is for the bill, not that Congress is working so hard to pass it.
  3. You say that Congress took four major steps toward political reform, but then I only count three. What am I missing?
- Thanks a lot. Feel free to send me another draft when you have one.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME:15-FEB-1996 10:10:11.01

SUBJECT: RE: securities

TO: Todd Stern ( STERN\_T ) (WHO)

READ:15-FEB-1996 10:10:19.01

TEXT:

don't be sarcastic; what input?



RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME:15-FEB-1996 10:23:16.60

SUBJECT: johnston meeting

TO: Jack M. Quinn

( QUINN\_J ) (WHO)

READ:NOT READ

TEXT:

It turns out that before DOJ called me, EPA called John Hilley and asked him to accompany Sally to the meeting with Johnston. He will do so, making my (or anyone else's) presence unnecessary.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 READ RECEIPT)

CREATOR: KAGAN\_E (WHO)

CREATION DATE/TIME:15-FEB-1996 14:49:00.00

SUBJECT: Receipt Notification

TO: WEINSTEIN\_P (OPD)

READ:15-FEB-1996 14:54:50.43

TEXT:

This is a Read Receipt Notification for:

Message Title: Pol Memo  
Addressee: KAGAN\_E  
Date Sent: 15-Feb-1996 01:57pm  
Date Read: 15-Feb-1996 02:49pm

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME:15-FEB-1996 09:32:14.06

SUBJECT: securities letter

TO: Todd Stern ( STERN\_T ) (WHO)

READ:15-FEB-1996 09:49:01.51

TEXT:

===== ATTACHMENT 1 =====

ATT CREATION TIME/DATE:15-FEB-1996 09:21:00.00

ATT BODYPART TYPE:B

ATT CREATOR: Elena Kagan

ATT SUBJECT: political reform form letter

ATT TO: Lori L. Anderson ( ANDERSON\_L )

TEXT:

Kathy Wallman asked me to take a look at the political reform form letter that you sent to her. In general, it looks excellent. But a few comments:

1. The President is supposed to be saying something on this subject in this weekend's radio address. It might make sense to see what he says there and use some of his language in this letter.
2. In general, the letter seems to give too much credit to the Congress. This is especially so in the third paragraph -- "Congress is striving," "Congress is working hard." In fact, Congress is going to let McCain Feingold die a quiet death, so the credit is undeserved. And anyway, why should we spend so much time talking about how great Congress is? Could we make this paragraph especially more President-focused? That is, just make clear that the President is for the bill, not that Congress is working so hard to pass it.
3. You say that Congress took four major steps toward political reform, but then I only count three. What am I missing?

Thanks a lot. Feel free to send me another draft when you have one.

===== END ATTACHMENT 1 =====

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME:15-FEB-1996 14:49:31.72

SUBJECT: campaign finance memo msg

TO: Kathleen M. Wallman ( WALLMAN\_KM ) (WHO)

READ:15-FEB-1996 15:46:21.18

TEXT:

===== ATTACHMENT 1 =====

ATT CREATION TIME/DATE:15-FEB-1996 13:48:00.00

ATT BODYPART TYPE:B

ATT CREATOR: Paul J. Weinstein, Jr

ATT SUBJECT: Pol Memo

ATT TO: Elena Kagan ( KAGAN\_E )

ATT TO: William Curry ( CURRY\_W )

TEXT:

Could you get me your comments to me today. Bruce thinks that even though we are still doing the radio address on pol reform, we need to send this memo to Harold.

===== END ATTACHMENT 1 =====

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME:15-FEB-1996 09:33:44.43

SUBJECT: securities

TO: Todd Stern ( STERN\_T ) (WHO)

READ:15-FEB-1996 09:50:03.74

TEXT:

The letter looks fine to me. You've worded it very carefully -- enough so to make it (technically speaking) accurate. Send it out!

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 READ RECEIPT)

CREATOR: KAGAN\_E (WHO)

CREATION DATE/TIME:20-FEB-1996 08:37:00.00

SUBJECT: Receipt Notification

TO: WEINSTEIN\_P (OPD)

READ:20-FEB-1996 10:48:57.41

TEXT:

This is a Read Receipt Notification for:

Message Title: Meeting to discuss congressional strategy

Addressee: KAGAN\_E

Date Sent: 16-Feb-1996 03:55pm

Date Read: 20-Feb-1996 08:37am

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME: 20-FEB-1996 18:59:32.46

SUBJECT: regulatory reform

TO: Jack M. Quinn ( QUINN\_J ) (WHO)

READ: NOT READ

TEXT:

I just spoke with Mike Fitzpatrick, who is Sally Katzen's assistant. Mike tells me that Sally will not ask Leon for another meeting; her view is that Leon already has told her what to do and that she's doing it. Mike also tells me that Wesley Warren, who is on Katie's staff, does not think another, more political meeting is necessary. And finally, I gathered from comments she made today that Kitty isn't going to do anything to upset what's been going on. So if the political types are going to be brought in, as you indicated they should be, I think you're going to have to do something. You could (1) call such a meeting yourself, or (2) talk to Katie and/or Ron about doing so, or (3) do nothing. I think (2) makes the most sense. There's no good reason why the initiative here should come from the counsel's office, but someone should try to do something about this. It doesn't make much sense to have discussions with Levin about statutory language on judicial review of decisional criteria -- at least in the way we're having them -- if we either don't want any bill at all or don't want any bill that includes such language.

# Withdrawal/Redaction Marker

## Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
007. email	Elena Kagan to Jack Quinn and Kathleen Wallman. Subject: [representation] (1 page)	02/20/1996	P5

### COLLECTION:

Clinton Presidential Records  
Automated Records Management System (Email)  
WHO ([From Elena Kagan])  
OA/Box Number: 500000

### FOLDER TITLE:

[2/5/1996 - 3/11/1996]

2009-1006-F  
ke776

### RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

Freedom of Information Act - [5 U.S.C. 552(b)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]



RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME:20-FEB-1996 08:38:55.50

SUBJECT: RE: Timber Legislative Language

TO: Alice E. Shuffield ( SHUFFIELD\_A ) (OMB)

READ:22-FEB-1996 13:12:12.13

TEXT:

yes

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME: 21-FEB-1996 17:15:59.99

SUBJECT: RE: Draft timber points

TO: Thomas C. Jensen ( JENSEN\_T ) (CEQ)

READ: 22-FEB-1996 08:09:07.25

CC: Kathleen A. McGinty ( MCGINTY\_K ) (CEQ)

READ: 21-FEB-1996 18:00:07.26

CC: T J Glauthier ( GLAUTHIER\_T ) (OMB)

READ: 21-FEB-1996 18:02:19.91

CC: Martha Foley ( FOLEY\_M ) (WHO)

READ: 21-FEB-1996 17:16:18.73

CC: Jennifer M. O'Connor ( OCONNOR\_J ) (WHO)

READ: 21-FEB-1996 17:45:19.10

CC: Dinah Bear ( BEAR\_D ) (CEQ)

READ: 21-FEB-1996 17:25:47.51

CC: Kathryn Higgins ( HIGGINS\_K ) (WHO)

READ: NOT READ

CC: Shelley N. Fidler ( FIDLER\_S ) (CEQ)

READ: 21-FEB-1996 17:58:52.29

CC: Ron Cogswell ( COGSWELL\_R ) (OMB)

READ: 21-FEB-1996 17:42:04.97

CC: Alice E. Shuffield ( SHUFFIELD\_A ) (OMB)

READ: NOT READ

CC: Robert C. Vandermark ( VANDERMARK\_R ) (CEQ)

READ: 21-FEB-1996 17:22:10.29

CC: Christine L. Nolin ( NOLIN\_CL ) (OMB)

READ: 21-FEB-1996 17:32:45.05

TEXT:

1. I'm also concerned about saying that provisions of the rider "undermine or are inconsistent with the forest plan." It sounds as if we're conceding what we in fact are vigorously contesting in court: that provisions in the rider force changes in, or otherwise affect the validity of, the Forest Plan. Could we instead say something like: "Repeal the provisions that some in the industry are using [or "may use"] to attack the forest plan"?

2. Instead of saying that we are suspending the salvage program for "enough time" etc., could we put in a specific number of days? We now have Justice considering the question, but my suspicion is that we'll be on a sounder legal basis if the suspension is for some definite time period.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME:21-FEB-1996 17:50:33.08

SUBJECT: RE: Draft timber points

TO: Dinah Bear ( BEAR\_D ) (CEQ)

READ:21-FEB-1996 17:56:31.74

CC: Thomas C. Jensen ( JENSEN\_T ) (CEQ)

READ:22-FEB-1996 07:56:55.47

CC: Kathleen A. McGinty ( MCGINTY\_K ) (CEQ)

READ:21-FEB-1996 18:00:25.77

CC: T J Glauthier ( GLAUTHIER\_T ) (OMB)

READ:21-FEB-1996 18:02:34.19

CC: Martha Foley ( FOLEY\_M ) (WHO)

READ:21-FEB-1996 17:57:31.94

CC: Jennifer M. O'Connor ( OCONNOR\_J ) (WHO)

READ:21-FEB-1996 17:51:38.48

CC: Kathryn Higgins ( HIGGINS\_K ) (WHO)

READ:NOT READ

CC: Shelley N. Fidler ( FIDLER\_S ) (CEQ)

READ:21-FEB-1996 17:59:30.04

CC: Ron Cogswell ( COGSWELL\_R ) (OMB)

READ:21-FEB-1996 17:55:29.39

CC: Alice E. Shuffield ( SHUFFIELD\_A ) (OMB)

READ:NOT READ

CC: Robert C. Vandermark ( VANDERMARK\_R ) (CEQ)

READ:21-FEB-1996 17:58:22.62

CC: Christine L. Nolin ( NOLIN\_CL ) (OMB)

READ:21-FEB-1996 18:43:46.50

TEXT:

1. I agree with Dinah as to the number of days.
2. I wouldn't even say "inconsistent." I don't think we want to suggest -- whether the timber companies or the enviros are making the argument (or just the Ninth Circuit sua sponte) -- that the rider may affect the validity of the Forest Plan. And to the extent this language is meant to refer to the Hogan decision foreclosing judicial review of forest plan sales, I think we should resist the argument that this ruling is "inconsistent with" the forest plan. It's true that we intended for there to be judicial review of such sales, but any claim of "inconsistency" here at least implicitly suggests that we won't voluntarily comply with the Plan's standards and guidelines. Can we say something like "provisions that some would use to attack the forest plan"?

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME:21-FEB-1996 17:22:59.35

SUBJECT: RE: Draft timber points

TO: Martha Foley ( FOLEY\_M ) (WHO)

READ:21-FEB-1996 17:56:48.09

TEXT:

Well, I THINK he's referring to the 2001(d) language that might be read to force expeditious release of all sales in the Forest Plan area, regardless whether they meet the standards of the Forest Plan.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 READ RECEIPT)

CREATOR: KAGAN\_E (WHO)

CREATION DATE/TIME: 22-FEB-1996 13:13:00.00

SUBJECT: Receipt Notification

TO: WEINSTEIN\_P (OPD)

READ: 22-FEB-1996 13:14:34.89

TEXT:

This is a Read Receipt Notification for:

Message Title: Ickes Memo  
Addressee: KAGAN\_E  
Date Sent: 22-Feb-1996 01:12pm  
Date Read: 22-Feb-1996 01:13pm

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME:22-FEB-1996 15:16:43.79

SUBJECT: RE: your e-mail

TO: Dinah Bear ( BEAR\_D ) (CEQ)

READ:22-FEB-1996 15:16:51.67

TEXT:

you bet. coming right up.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 READ RECEIPT)

CREATOR: KAGAN\_E (WHO)

CREATION DATE/TIME:22-FEB-1996 15:16:00.00

SUBJECT: Receipt Notification

TO: FOLEY\_M (WHO)

READ:22-FEB-1996 15:19:14.21

TEXT:

This is a Read Receipt Notification for:

Message Title: RE: timber -- chance of lawsuit  
Addressee: KAGAN\_E  
Date Sent: 22-Feb-1996 03:13pm  
Date Read: 22-Feb-1996 03:16pm

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME:22-FEB-1996 09:46:26.19

SUBJECT: RE: Draft 2 - Timber points

TO: Thomas C. Jensen ( JENSEN\_T ) (CEQ)

READ:22-FEB-1996 13:01:21.11

CC: Kathleen A. McGinty ( MCGINTY\_K ) (CEQ)

READ:NOT READ

CC: T J Glauthier ( GLAUTHIER\_T ) (OMB)

READ:22-FEB-1996 12:52:38.26

CC: Martha Foley ( FOLEY\_M ) (WHO)

READ:22-FEB-1996 10:08:03.48

CC: Jennifer M. O'Connor ( OCONNOR\_J ) (WHO)

READ:22-FEB-1996 09:48:53.17

CC: Dinah Bear ( BEAR\_D ) (CEQ)

READ:22-FEB-1996 10:00:08.02

CC: Kathryn Higgins ( HIGGINS\_K ) (WHO)

READ:22-FEB-1996 10:57:36.89

CC: Shelley N. Fidler ( FIDLER\_S ) (CEQ)

READ:22-FEB-1996 10:20:31.52

CC: Ron Cogswell ( COGSWELL\_R ) (OMB)

READ:22-FEB-1996 11:14:40.60

CC: Robert C. Vandermark ( VANDERMARK\_R ) (CEQ)

READ:22-FEB-1996 09:52:00.75

CC: Alice E. Shuffield ( SHUFFIELD\_A ) (OMB)

READ:22-FEB-1996 09:46:40.00

TEXT:

I think that in response to Dinah's comment, we agreed to take out the phrase "in the timber industry" in (2). (Also, I kind of like "attack" better than "disrupt.").

I agree with Jennifer that (1) is a bit unclear. How about saying something like : "Repeal the provisions of the rider that opened up the Northwest's ancient forests to logging and prevented the courts from hearing claims that this logging violated environmental standards." (Or if you like this open/close stuff, you can say "and closed the courts to claims that this logging violated environmental standard.")



RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME:22-FEB-1996 14:58:36.49

SUBJECT: timber -- chance of lawsuit

TO: Martha Foley

( FOLEY\_M ) (WHO)

READ:22-FEB-1996 15:07:54.88

TEXT:

Dinah and I just wanted to make double-sure that Leon is aware that if we do the suspension, the industry will file suit immediately and a court may well issue a temporary restraining order within the week. It's hard to estimate the probability of a TRO, but given the composition of the federal bench, I'd put it in the 30 to 50% range.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME: 22-FEB-1996 15:30:56.07

SUBJECT: tro

TO: Martha Foley ( FOLEY\_M ) (WHO)

READ: 22-FEB-1996 15:31:07.63

TO: Dinah Bear ( BEAR\_D ) (CEQ)

READ: 22-FEB-1996 15:31:21.69

TEXT:

Good question. The court's remedy (whether at the TRO stage or any other) would almost certainly be very limited: the court would order us to lift our suspension. This might (or might not) be an embarrassment, but it wouldn't put us in any worse position than we're in right now. DOJ thinks there is almost no chance of a court going further and actually ordering us to release certain sales, and Dinah and I agree.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME:22-FEB-1996 15:19:12.82

SUBJECT: timber memo to martha

TO: Dinah Bear ( BEAR\_D ) (CEQ)

READ:22-FEB-1996 15:25:01.97

TEXT:

===== ATTACHMENT 1 =====

ATT CREATION TIME/DATE:22-FEB-1996 14:34:00.00

ATT BODYPART TYPE:B

ATT CREATOR: Elena Kagan

ATT SUBJECT: timber -- chance of lawsuit

ATT TO: Martha Foley ( FOLEY\_M )

TEXT:

Dinah and I just wanted to make double-sure that Leon is aware that if we do the suspension, the industry will file suit immediately and a court may well issue a temporary restraining order within the week. It's hard to estimate the probability of a TRO, but given the composition of the federal bench, I'd put it in the 30 to 50% range.

===== END ATTACHMENT 1 =====

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME:23-FEB-1996 12:00:03.94

SUBJECT: indian gaming

TO: Stephen R. Neuwirth ( NEUWIRTH\_S ) (WHO)

READ:23-FEB-1996 12:04:44.08

TEXT:

Thanks for referring Mike Schmidt to me. I concurred with what you told him.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME:23-FEB-1996 11:38:23.50

SUBJECT: RE: PARTIAL BIRTH ABORTION

TO: Kathleen M. Wallman ( WALLMAN\_KM ) (WHO)

READ:23-FEB-1996 11:38:34.85

TEXT:

It's at 4:00, and I didn't even have to invite myself! Thanks.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME:23-FEB-1996 11:55:51.98

SUBJECT: RE: partial birth meeting

TO: Todd Stern ( STERN\_T ) (WHO)

READ:23-FEB-1996 15:22:53.71

TEXT:

Well, that's awfully nice of your very reliable source to say. I actually felt as if I were having a peculiarly inarticulate day, so it's good to know I wasn't quite as unclear as I thought.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 READ RECEIPT)

CREATOR: KAGAN\_E (WHO)

CREATION DATE/TIME:23-FEB-1996 18:29:00.00

SUBJECT: Receipt Notification

TO: WEINSTEIN\_P (OPD)

READ:23-FEB-1996 18:30:46.81

TEXT:

This is a Read Receipt Notification for:

Message Title: Campaign Finance Reform Principles  
Addressee: KAGAN\_E  
Date Sent: 23-Feb-1996 06:25pm  
Date Read: 23-Feb-1996 06:29pm

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME: 24-FEB-1996 15:28:50.86

SUBJECT: indian agming

TO: Jennifer M. O'Connor ( OCONNOR\_J ) (WHO)

READ: 26-FEB-1996 09:14:41.82

TEXT:

Call me at your convenience re indian gaming issue.



RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME:26-FEB-1996 18:59:42.51

SUBJECT: RE: revised timber language

TO: Ruth D. Saunders ( SAUNDERS\_R ) (OMB)

READ:27-FEB-1996 09:27:36.64

TEXT:

COULD YOU SEND ME THE LANGUAGE WHEN YOU GET IT? i LOOKED AT IT A WHILE AGO AND  
WOULD LIKE TO REVIEW IT ONCE MORE. THANKS

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME:26-FEB-1996 19:47:49.72

SUBJECT: SECRET SERVICE

TO: Kathleen M. Wallman ( WALLMAN\_KM ) (WHO)

READ:27-FEB-1996 10:21:58.39

TEXT:

fyi: I really haven't forgotten about Uniformed Division unionization. I've been waiting for some input from DOJ. I called Merrick today to remind him. He's promised to get me something very soon.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME: 27-FEB-1996 09:56:25.20

SUBJECT: RE: timber legislation - version 2

TO: Ruth D. Saunders ( SAUNDERS\_R ) (OMB)

READ: 27-FEB-1996 09:57:06.89

TEXT:

I'm being told that this is an "incompatible file format."

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 READ RECEIPT)

CREATOR: KAGAN\_E (WHO)

CREATION DATE/TIME:27-FEB-1996 18:30:00.00

SUBJECT: Receipt Notification

TO: JOHNSON\_BJ (CEQ)

READ:27-FEB-1996 18:34:15.97

TEXT:

This is a Read Receipt Notification for:

Message Title: RE: timber fact sheet, draft

Addressee: KAGAN\_E

Date Sent: 27-Feb-1996 06:26pm

Date Read: 27-Feb-1996 06:30pm

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME:28-FEB-1996 12:26:10.47

SUBJECT: timber meeting

TO: Robert C. Vandermark

( VANDERMARK\_R ) (CEQ)

READ:28-FEB-1996 12:27:33.89

TEXT:

I'd like to attend tomorrow's timber meeting. Thanks.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME: 28-FEB-1996 16:20:17.16

SUBJECT: Call with Kitty Kolbert

TO: Betsy Myers

( MYERS\_B ) (WHO)

READ: 28-FEB-1996 17:03:36.14

TEXT:

I placed a phone call today to Kitty Kolbert. It was perfectly pleasant. She clearly felt as if she had already said what she wanted to say regarding the merits of our position. She noted some vague displeasure about the NYT getting the letter before the women's groups did, but she said she understood why we did that too. The only other thing she said on 1833 was that we should get the President to meet with Coreen Costello and Vicky Young because "emotion is three-quarters of the battle" and a meeting of this kind would "improve his comfort level."

Otherwise, we spent a fair amount of time talking about (1) the idea she has on federal insurance plans, which she said she had discussed with you, and (2) the possibility of getting the Justice Department to agree to an injunction in the challenge she has brought to the abortion-related provision of the telecommunications act. I think she figured that it made more sense to use my phone call as an opportunity to lobby us on a couple of things than to keep complaining about what we did yesterday. I will look into, and discuss with Jack, the two things she mentioned, and I will keep you informed of any progress.

PS: Your introduction of me was awfully nice yesterday. Thanks.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME:28-FEB-1996 09:34:03.17

SUBJECT: welfare reform

TO: Stephen R. Neuwirth ( NEUWIRTH\_S ) (WHO)

READ:28-FEB-1996 09:40:32.74

TEXT:

Absolutely. In my view, that issue is completely yours. I wouldn't have treated it in any other way.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME:28-FEB-1996 09:36:07.53

SUBJECT: abortion article

TO: Mary Ellen Glynn ( GLYNN\_M ) (WHO)

READ:28-FEB-1996 10:09:23.79

TEXT:

Great job with the NYT. I don't think we could have gotten a better article.



RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME: 28-FEB-1996 17:48:28.18

SUBJECT: timber sales

TO: Jennifer M. O'Connor ( OCONNOR\_J ) (WHO)

READ: 29-FEB-1996 08:11:07.37

TEXT:

Do you recall the First and Last timber sales?

These were two "real 318" sales (total: 11,800 mbf) that the Forest Service voluntarily withdrew in 1990 after Judge Dwyer enjoined four very similar sales from going forward. Judge Hogan ruled that these two sales fell within the scope of his decision on Section 318 and ordered the government to release them. At the time, environmental groups had a motion pending in Judge Dwyer's court requesting him to prevent the two sales from going forward. Because of this motion, DOJ decided it should not release the sales prior to receiving a ruling from Judge Dwyer. Last week, Judge Dwyer ruled that he could not withhold the two sales and that DOJ must comply with Hogan's injunction. (The good news is that he is continuing to withhold the four previously enjoined sales pending the Ninth Circuit's decision on Hogan's ruling.) This means that DOJ now is facing an injunction from Judge Hogan to release the sales and a declaratory judgment from Dwyer that it must comply with the injunction. Timber industry lawyers have already threatened contempt.

The Justice Dept is going to tell the environmental groups today that it plans on releasing these two sales within 48 hours. This will give the groups time to go back to Dwyer and seek expedited consideration of their motion regarding the two sales and a temporary restraining order preventing the sales' release. DOJ then would go back to Judge Hogan and ask for a stay pending Dwyer's decision on these matters. (Of course, Dwyer may summarily deny the enviros' motion, leaving us with no grounds to petition Hogan.)

DOJ also is considering the position it should take on the enviros' motion in Judge Dwyer's court. As you may recall, both DOJ and the Forest Service have stated on prior occasions, stretching back to early 1995, that there are no legal grounds on which to withhold the sales. DOJ does not believe it can now switch sides and support the enviros' legal argument. DOJ is considering, however, (1) whether it can decline to take a legal position on the enviros' motion (rather than opposing it), and (2) whether it can file a factual affidavit listing the environmental harms involved in releasing the sales.

I have urged Justice to take actions (1) and (2) above. I do not think there is much more Justice can do, given its prior statements about the absence of any legal basis for withholding these sales. (Given that DOJ has never contested release of these sales, and in fact has indicated that there is no legal basis for withholding them, DOJ also cannot appeal the Hogan/Dwyer decisions.) You should know, however, that the release of these sales will probably get a fair amount of publicity, especially coming right after the President's "admission of error" on the timber rider.

Let me know ASAP if you and/or Harold have any views on all this; and of course, call me if you have any questions.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME:29-FEB-1996 14:27:58.14

SUBJECT: Navy matter

TO: Kathleen M. Wallman ( WALLMAN\_KM ) (WHO)

READ:29-FEB-1996 14:58:21.38

TEXT:

Lois Schiffer mentioned to me that John Schmidt's office had cleared her to talk with the counsel's office about a Navy action that raises the question whether NEPA applies on the high seas. She asked me to a meeting on the issue, assuming that I'd be the person handling the matter. I said I'd have to check with you to see whether you had assigned (or wanted to assign) someone else. From what I understand, there is a Clinton Executive Order (which, presumably, someone in the counsel's office handled) that is semi-related to the issue.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 READ RECEIPT)

CREATOR: KAGAN\_E (WHO)

CREATION DATE/TIME:29-FEB-1996 19:18:00.00

SUBJECT: Receipt Notification

TO: JONES\_RE (OMB)

READ:29-FEB-1996 19:20:08.29

TEXT:

This is a Read Receipt Notification for:

Message Title: DRAFT SAP ON HR 497 -- NAT'L GAMBLING COMMISSION  
Addressee: KAGAN\_E  
Date Sent: 29-Feb-1996 06:59pm  
Date Read: 29-Feb-1996 07:18pm

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME: 29-FEB-1996 18:08:26.90

SUBJECT: email to joc

TO: Dinah Bear ( BEAR\_D ) (CEQ)

READ: 29-FEB-1996 18:12:08.91

TEXT:

===== ATTACHMENT 1 =====

ATT CREATION TIME/DATE: 28-FEB-1996 16:48:00.00

ATT BODYPART TYPE: B

ATT CREATOR: Elena Kagan

ATT SUBJECT: timber sales

ATT TO: Jennifer M. O'Connor ( OCONNOR\_J )

TEXT:

Do you recall the First and Last timber sales?

These were two "real 318" sales (total: 11,800 mbf) that the Forest Service voluntarily withdrew in 1990 after Judge Dwyer enjoined four very similar sales from going forward. Judge Hogan ruled that these two sales fell within the scope of his decision on Section 318 and ordered the government to release them. At the time, environmental groups had a motion pending in Judge Dwyer's court requesting him to prevent the two sales from going forward. Because of this motion, DOJ decided it should not release the sales prior to receiving a ruling from Judge Dwyer. Last week, Judge Dwyer ruled that he could not withhold the two sales and that DOJ must comply with Hogan's injunction. (The good news is that he is continuing to withhold the four previously enjoined sales pending the Ninth Circuit's decision on Hogan's ruling.) This means that DOJ now is facing an injunction from Judge Hogan to release the sales and a declaratory judgment from Dwyer that it must comply with the injunction. Timber industry lawyers have already threatened contempt.

The Justice Dept is going to tell the environmental groups today that it plans on releasing these two sales within 48 hours. This will give the groups time to go back to Dwyer and seek expedited consideration of their motion regarding the two sales and a temporary restraining order preventing the sales' release. DOJ then would go back to Judge Hogan and ask for a stay pending Dwyer's decision on these matters. (Of course, Dwyer may summarily deny the enviros' motion, leaving us with no grounds to petition Hogan.)

DOJ also is considering the position it should take on the enviros' motion in Judge Dwyer's court. As you may recall, both DOJ and the Forest Service have stated on prior occasions, stretching back to early 1995, that there are no legal grounds on which to withhold the sales. DOJ does not believe it can now switch sides and support the enviros' legal argument. DOJ is considering, however, (1) whether it can decline to take a legal position on the enviros' motion (rather than opposing it), and (2) whether it can file a factual affidavit listing the environmental harms involved in releasing the sales. I have urged Justice to take actions (1) and (2) above. I do not think there is much more Justice can do, given its prior statements about the absence of any legal basis for withholding these sales. (Given that DOJ has never contested release of these sales, and in fact has indicated that there is no legal basis for withholding them, DOJ also cannot appeal the Hogan/Dwyer decisions.) You should know, however, that the release of these sales will probably get a fair amount of publicity, especially coming right after the President's "admission of error" on the timber rider.

Let me know ASAP if you and/or Harold have any views on all this; and of course, call me if you have any questions.

===== END ATTACHMENT 1 =====

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME:29-FEB-1996 14:21:15.90

SUBJECT: neuwirth memo

TO: Kathleen M. Wallman ( WALLMAN\_KM ) (WHO)

READ:29-FEB-1996 14:57:47.74

TEXT:

By the by, I e-mailed Steve that in my view, he should handle the matter mentioned in his memo.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME:29-FEB-1996 14:18:40.45

SUBJECT: Telecon with Kitty Kolbert

TO: Ashley Oliver ( OLIVER\_A ) (WHO)

READ:29-FEB-1996 15:43:41.14

CC: Holly Carver ( CARVER\_H ) (WHO)

READ:29-FEB-1996 15:18:03.33

TEXT:

I had a very pleasant telephone conversation with Kitty Kolbert on Wednesday. She clearly felt as if she had already said what she wanted to say regarding the merits of our position. She noted some vague displeasure about the NYT getting the letter before the women's groups did, but said she understood why we did that too. The only other thing she said on 1833 was that we should get the President to meet with Coreen Costello and Vicky Young because "emotion is three-quarters of the battle" and a meeting of this kind would "improve his comfort level" with the procedure.

Otherwise, we spent a fair amount of time talking about two completely different abortion issues. She wanted the help of the counsel's office on these issues, and I promised to look into them.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME:29-FEB-1996 11:57:02.89

SUBJECT: meeting with jack

TO: Ron Klain

( KLAIN\_R ) Autoforward to: Remote Addressee

READ:NOT READ

TEXT:

I had a very good conversation with Jack this morning. Call me when it's convenient for you, and I'll fill you in.



RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME: 1-MAR-1996 08:40:40.29

SUBJECT: sap on hr 497

TO: Ronald E. Jones ( JONES\_RE ) (OMB)

READ: 1-MAR-1996 08:40:58.69

TEXT:

The suggested change is fine.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME: 2-MAR-1996 16:00:38.79

SUBJECT: lrm 3621

TO: Robert J. Pellicci ( PELLICCI\_R ) (OMB)

READ: 4-MAR-1996 09:50:19.39

TEXT:

no comment on lrm 3621 from white house counsel's office.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME: 2-MAR-1996 15:46:27.61

SUBJECT: indians again

TO: Kathleen M. Wallman ( WALLMAN\_KM ) (WHO)

READ: 4-MAR-1996 09:47:28.36

TEXT:

Steve Neuwirth told me on Friday afternoon that he had heard that James was putting together a memo on indian gaming issues and, in the course of doing so, had called Interior. I have no idea for whom this memo is being written -- or even whether any of this is true. Can I leave it to you to deal with this? On another matter, I decided it would be a nice gesture to give this Navy Nepa matter to Steve, and I did so. I fear I should have asked you first; I hope this fit of generosity is OK with you.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME: 4-MAR-1996 11:03:53.06

SUBJECT: RE: lrm 3577

TO: Robert J. Pellicci ( PELLICCI\_R ) (OMB)

READ: 4-MAR-1996 13:22:01.14

TEXT:

Thanks. You've now got my sign-off too.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME: 4-MAR-1996 10:57:41.83

SUBJECT: lrm 3577

TO: Robert J. Pellicci ( PELLICCI\_R ) (OMB)

READ: 4-MAR-1996 11:01:38.70

TEXT:

Have you gotten any comments on this yet?

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME: 4-MAR-1996 10:07:52.09

SUBJECT: RE: treasury postal

TO: Deborah L. Fine ( FINE\_D ) (OPD)

READ: 4-MAR-1996 10:54:16.13

CC: Jennifer L. Klein ( KLEIN\_J ) (OPD)

READ: 4-MAR-1996 11:22:25.94

TEXT:

Yes. Let's say Thursday at 4:00.

# Withdrawal/Redaction Marker

## Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
008. email	Elena Kagan to Ron Klain. Subject: [career] (1 page)	03/06/1996	Personal Misfile

### COLLECTION:

Clinton Presidential Records  
Automated Records Management System (Email)  
WHO ([From Elena Kagan])  
OA/Box Number: 500000

### FOLDER TITLE:

[2/5/1996 - 3/11/1996]

2009-1006-F  
ke776

### RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME: 7-MAR-1996 15:38:59.00

SUBJECT: meeting

TO: Jennifer L. Klein ( KLEIN\_J ) (OPD)

READ: 7-MAR-1996 16:30:51.76

TO: Deborah L. Fine ( FINE\_D ) (OPD)

READ: 7-MAR-1996 15:40:03.43

TEXT:

I'm really sorry about this, but could we postpone our meeting until tomorrow?  
(I just got handed an emergency project.) I'm free between 10 and 11 in the  
morning, and anytime in the afternoon.



RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME: 7-MAR-1996 16:28:21.86

SUBJECT: RE: Shelly

TO: Kathleen M. Wallman ( WALLMAN\_KM ) (WHO)

READ: 7-MAR-1996 19:05:16.98

TEXT:

e-mailing jack. I take it from what she told me (this was a very brief conversation prior to a timber meeting getting under way) that jack had had something to do with this issue when working for the vp.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME: 8-MAR-1996 14:47:04.52

SUBJECT: abortion language

TO: Nancy-Ann E. Min

( MIN\_N ) (OMB)

READ: 8-MAR-1996 17:15:35.86

TEXT:

I don't know if it's relevant anymore, but I've had some further conversations with OLC on the abortion language in the CR. I think we all agree that although it would not be absolutely impossible to come up with a constitutionally-based objection to the provision, it would be very very difficult. As we discussed before, the government has wide (though not unfettered) discretion to impose conditions on funding, given that there's no obligation to provide funding at all. The conditions here are probably not sufficiently burdensome, intrusive, or unrelated to program goals to make the provision unconstitutional.

# Withdrawal/Redaction Marker

## Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
009. email	Elena Kagan to Kathleen Wallman. Subject: attached [partial] (1 page)	03/08/1996	P6/b(6)

### **COLLECTION:**

Clinton Presidential Records  
Automated Records Management System (Email)  
WHO ([From Elena Kagan])  
OA/Box Number: 500000

### **FOLDER TITLE:**

[2/5/1996 - 3/11/1996]

2009-1006-F  
ke776

### **RESTRICTION CODES**

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME: 8-MAR-1996 14:51:58.96

SUBJECT: attached

TO: Kathleen M. Wallman

( WALLMAN\_KM ) (WHO)

READ: 8-MAR-1996 17:04:24.87

TEXT:

I just sent the attached to Nancy-Ann Min. I think OLC and I ended up agreeing that it would be possible to devise a constitutional argument (along the lines I discussed with you), but that the argument really would push the envelope. (b)(6)

===== ATTACHMENT 1 =====

ATT CREATION TIME/DATE: 8-MAR-1996 14:40:00.00

ATT BODYPART TYPE:B

ATT CREATOR: Elena Kagan

ATT SUBJECT: abortion language

ATT TO: Nancy-Ann E. Min

( MIN\_N )

TEXT:

I don't know if it's relevant anymore, but I've had some further conversations with OLC on the abortion language in the CR. I think we all agree that although it would not be absolutely impossible to come up with a constitutionally-based objection to the provision, it would be very very difficult. As we discussed before, the government has wide (though not unfettered) discretion to impose conditions on funding, given that there's no obligation to provide funding at all. The conditions here are probably not sufficiently burdensome, intrusive, or unrelated to program goals to make the provision unconstitutional.

===== END ATTACHMENT 1 =====

[009]

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME: 9-MAR-1996 18:24:24.60

SUBJECT: line item veto

TO: Paul J. Weinstein, Jr ( WEINSTEIN\_P ) (OPD)

READ:11-MAR-1996 11:31:35.71

TEXT:

Could you call me re the line item veto? Many thanks.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME: 9-MAR-1996 18:57:53.11

SUBJECT: re ref

TO: Michael A. Fitzpatrick ( FITZPATRIC\_M ) (OMB)

READ: 11-MAR-1996 14:12:00.30

TEXT:

sorry I missed your meeting. Call me when you have a chance.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME: 9-MAR-1996 17:50:00.82

SUBJECT: work assignments

TO: Kathleen M. Wallman ( WALLMAN\_KM ) (WHO)

READ:11-MAR-1996 09:24:44.73

TEXT:

1. CEQ folks asked me to get involved -- I think in a relatively peripheral way -- with a possible debt-for-nature swap involving the Headwaters Forest Complex. Can I go ahead with it, or would you like to reassign it?
2. Also, Nancy-Ann Min asked me to look at some new abortion language that might go on a CR, involving medical accreditation standards. Same question as above.

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME: 9-MAR-1996 18:01:50.66

SUBJECT: Indian gaming

TO: Martha Foley ( FOLEY\_M ) (WHO)

READ:11-MAR-1996 09:44:10.99

TEXT:

I keep meaning to let you know, and keep on forgetting, that if you ever again need any information on indian gaming issues, you should call me. As I take it you've heard by now, the safest course on these matters is to contact the counsel's office, and I'm the person in the counsel's office who handles these issues. There was absolutely no harm done of course; this is just for next time (if there is one).



RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME: 9-MAR-1996 17:25:27.52

SUBJECT: hatfield language

TO: Martha Foley ( FOLEY\_M ) (WHO)

READ: 10-MAR-1996 15:38:08.65

TO: Dinah Bear ( BEAR\_D ) (CEQ)

READ: 9-MAR-1996 17:33:44.44

TEXT:

On looking over this report this weekend, I struck by the following sentence: "A purchaser may not be compelled to accept alternative volume over the purchaser's objection as he cannot be under present law." I'm not sure what the drafters intended this sentence to mean, but it could be read to say that under current law, purchasers can't ever be compelled to accept alternative volume. Of course that's not so; current law provides that in the standard (k)(2) case, purchasers CAN be compelled to accept alternative volume (of like kind and value).

This highlights how much worse the new statutory language is than current law. The new language says that in (k)(2) cases, the Secretary "shall reach agreement" with the purchaser regarding alternative timber; it doesn't say what the current language does -- that the Secretary "shall provide alternative timber" (with the purchaser having nothing to say about the matter). So under the new language, a purchaser in (k)(2) cases can harvest the "original trees"; accepting alternative timber is wholly discretionary.

# Withdrawal/Redaction Marker

## Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
010. email	Elena Kagan to Ron Klain. Subject: ambition (1 page)	03/10/1996	P6/b(6)

### **COLLECTION:**

Clinton Presidential Records  
Automated Records Management System (Email)  
WHO ([From Elena Kagan])  
OA/Box Number: 500000

### **FOLDER TITLE:**

[2/5/1996 - 3/11/1996]

2009-1006-F  
ke776

### **RESTRICTION CODES**

Presidential Records Act - [44 U.S.C. 2204(a)]

Freedom of Information Act - [5 U.S.C. 552(b)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

# Withdrawal/Redaction Marker

## Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
011. email	Elena Kagan to Ron Klain re: ambition (1 page)	03/11/1996	P6/b(6)

### COLLECTION:

Clinton Presidential Records  
Automated Records Management System (Email)  
WHO ([From Elena Kagan])  
OA/Box Number: 500000

### FOLDER TITLE:

[2/5/1996 - 3/11/1996]

2009-1006-F  
ke776

### RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
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RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

CREATOR: Elena Kagan ( KAGAN\_E ) (WHO)

CREATION DATE/TIME:11-MAR-1996 13:10:56.02

SUBJECT: conf call

TO: Dinah Bear ( BEAR\_D ) (CEQ)

READ:11-MAR-1996 13:44:54.68

TEXT:

Right now, it's set for 3:00